STATEMENT

A four-count indictment charged the petitioner with two transactions involving marihuana. Two counts were based on each transaction—one alleging unlawful importation of marihuana (21 U.S.C. 176(a)) and the other alleging the acquisition of marihuana without having paid the transfer tax thereon (26 U.S.C. 4744(a)) (R. 1-5). The petitioner was found guilty by a jury as charged (R. 23, 140). He was sentenced to ten years' imprisonment on each count (the terms to be concurrent) and to fines totalling $1,000 (R. 24-26, 152-153). On appeal, the court of appeals affirmed.

The issue in this case relates solely to the seizure by local police officers of marihuana which the petitioner had on his person and in his garage at the time of his arrest for other offenses. Prior to trial the petitioner moved to suppress use of the marihuana in evidence (R. 7-9). The facts relating to this issue are as follows:

At about 10:00 p.m., officers of the Honolulu Police Department went to the petitioner's home to arrest him on two warrants charging assault and battery and uttering threats (R. 38, 44). The petitioner responded to a knock on the door, was informed of the officers' identity and purpose, and was arrested on the warrants. He invited the officers to step inside, saying that he wished to read the documents. As they entered the living room, the officers noticed the strong and distinctive odor of burning marihuana (R. 39, 46-47, 50, 93, 97). They were introduced to the petitioner's sister-in-law, Miss Takahashi, who was present in the room. Then an officer "frisked" the

petitioner for weapons and another summoned the patrol wagon. Meanwhile, the police checked the ashtrays in the room (R. 39, 46–48). One officer, who had accompanied Miss Takahashi while she obtained the petitioner's glasses from his automobile outside, reentered the house and stated that the petitioner "was supposed to have some marihuana on him." (R. 39, 48, 95–96). The police asked the petitioner to "take everything out of his pockets and lay it on the table"; when the petitioner did so he attempted to conceal one item. That item turned out to be a small packet containing marihuana (R. 39–40, 51–52, 80–81, 90, 101–102). The petitioner was then placed under arrest for possession of marihuana (R. 40). A search of the premises followed, during the course of which the officers found a second package of marihuana in the petitioner's garage (R. 41; 65–66, 82–83).

The district court upheld the second search of the petitioner's person as a lawful incident of his arrest on the warrants and denied his motion to suppress (R. 72–73). The court of appeals affirmed on the same basis. It pointed out, as to the emptying of the petitioner's pockets, that the officers had acquired dominion over the petitioner's person as a result of his arrest pursuant to the warrants and that the right to search his person was an incident of that arrest. The fact that a cursory initial search of the petitioner for weapons had already been made did not

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[1] In this regard, it is not clear from the opinion of the appellate division of the Hawaiian District Court in *Territory v. Lee*, 52 Haw. 1, 468 P. 2d 51, that searches made by local police on a federal warrant are searches made by local police on a federal territory.

vitiate the second more thorough search, especially since, by local police regulation, the petitioner was liable to a thorough search when he reached police headquarters in any event. Nor did it matter that the second search was made with the expectation of finding contraband marihuana (R. 163–164). The court of appeals summed up its reasoning as follows (R. 164):

> Power over the body of the accused is the essence of his arrest; the two cannot be separated. To say that the police may curtail the liberty of the accused but refrain from impinging upon the sanctity of his pockets except for enumerated reasons is to ignore the custodial duties which devolve upon arresting authorities. Custody must of necessity be asserted initially over whatever the arrested party has in his possession at the time of apprehension. Once the body of the accused is validly subjected to the physical dominion of the law, inspections of his person, regardless of purpose, cannot be deemed unlawful. * * * unless they violate the dictates of reason either because of their number or their manner of perpetration. Hence, we think that the second search of appellant's person was permissible under the Fourth Amendment. * * *.

The court also held that the search of the petitioner's garage was a valid incident of his arrest, since it followed notification to him that he was being held on a narcotics charge (R. 163–164).

ARGUMENT

The gist of the petitioner's argument in this Court is that a person arrested under a valid warrant may

only be searched for the purpose of uncovering items which could be used to effect an escape and such other objects as are "reasonably related to the cause of the arrest" (Pet. 7), a claim which he believes is supported by cases where it was alleged or shown that a general exploratory search had been made (Pet. 5–7). In those cases, however, one of the questions was whether the arrest (or attempted arrest) was made in good faith, or merely as a pretext to conduct an otherwise unlawful search of premises.[1] There is no such problem in this case. The petitioner, at the time when he was told to empty his pockets, was validly under arrest pursuant to two warrants served upon him by the officers. They intended to take him to police headquarters as soon as the patrol wagon arrived. Incident to that valid arrest, the officers acquired the right to make a search of the petitioner's person—a search which inevitably would have been made later at the police station. When the officers undertook to exercise that right, and told the petitioner to place the contents of his pockets on the table, petitioner attempted to conceal one item. That item turned out to be marihuana, a contraband substance subject to seizure. "An arresting officer is free to take hold of articles which he sees the accused deliberately trying to hide", *Abel* v. *United States*, 362 U.S. 217, 238, and this Court has already held that it is not a significant consideration that the contra-

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[1] See, for example, *Abel* v. *United States*, 362 U.S. 217, 225–226; *Jones* v. *United States*, 357 U.S. 493, 499–500; *United States* v. *Lefkowitz*, 285 U.S. 452, 465–467; *Harris* v. *United States*, 331 U.S. 145, 153; *Go-Bart Importing Company* v. *United States*, 282 U.S. 344, 357–358.

band which was seized was not related to the crime for which the petitioner was arrested." *Harris v. United States*, 331 U.S. 145, 154. Nor is it material that this search was, in a sense, the second search of the petitioner's person. See *Abel v. United States*, *supra*, 362 U.S. at 239.

The petitioner complains that, after his arrest, the officers acquired probable cause to believe that the petitioner was in possession of marihuana, and so were specifically looking for contraband when the second search was made. In answer to this argument the court of appeals stated, "Custody must of necessity be asserted initially over whatever the arrested party has in his possession at the time of apprehension. Once the body of the accused is validly subjected to the physical dominion of the law, inspections of his person, regardless of purpose, cannot be deemed unlawful * * *." *(supra*, p. 4). Such an inspection does not breach any privacy of the petitioner not already abrogated incident to the arrest. The fact that the officers were searching for, and found, contraband rather than something related to the cause for the petitioner's arrest goes to the question of whether or not the initial arrest was valid, or merely a deception adopted to authorize an otherwise unlawful search. See *White v. United States*, 271 F. 2d [illegible], 831 (C.A. D.C.). Here, it is not questioned but that the arrest was made in good faith and pursuant to valid warrants.

After marihuana was found on the petitioner's person, he was told that thereafter he was being held on a narcotics charge. The search of his garage

which resulted in the discovery of a second package of marihuana, was a valid incident of that police action. *United States* v. *Rabinowitz*, 339 U.S. 56, 61; *Harris* v. *United States*, *supra*, 331 U.S. 145.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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